CAPITAL PLANNING ADVISORY BOARD

Minutes of the 2nd Meeting of the 2005 Calendar

August 11, 2005

The 2nd meeting of the Capital Planning Advisory Board (CPAB) of the 2005 calendar year was held on Thursday, August 11, 2005, at 10:00 AM, in Room 111 of the Capitol Annex. Representative Perry Clark, Co-Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Jack Westwood, Co-Chair; Representative Perry Clark, Co-Chair; Senator David Boswell; Representative Ron Crimm; Paul Gannoe; Bill Hintze; Jason Nemes; Laurel True; Garlan Vanhook; Judge William Wehr; and Melinda Wheeler.

Guests Appearing Before the Board: Garlan Vanhook, General Manager for Facilities, Administrative Office of the Courts; Richie Farmer, Commissioner, Department of Agriculture; Mark Farrow, Deputy Commissioner, Department of Agriculture; Glenn Mitchell, Executive Director, Strategic Planning and Administration, Department of Agriculture; Michael Judge, Director of Marketing and Promotion, Department of Agriculture; Donna Duncan, Commissioner, Department of Financial Incentives, Economic Development Cabinet; Warren Nash, Deputy Commissioner, Department of Financial Incentives, Economic Development Cabinet; Deborah Clayton, Commissioner, Department of Commercialization and Innovation, Economic Development Cabinet; Cordell Lawrence, Deputy Commissioner, Governor's Office for Local Development; Rob Potter, Deputy Director, KY Infrastructure Authority; and Robert Tarvin, Executive Director, School Facilities Construction Commission.

LRC Staff: Pat Ingram, Mary Lynn Collins, Nancy Osborne, and Debbie Rodgers.

Representative Clark explained that the minutes from the last meeting are still being prepared and will be available for review and approval at the next meeting. He said today's meeting will continue the review of the 2006-2012 agency capital plan submissions. He asked the Board's Staff Administrator Pat Ingram to review the materials that had been provided to the members.

Ms. Ingram said there is overview information addressing all of the agency plans that have been submitted. It includes a statewide summary by type of project and proposed funding source, and a statewide summary by area of government. The total cost of all proposed projects for the six years is just over $13 billion including nearly $8 billion from state funds, with most of the funding being for construction projects. The remainder is for equipment, information technology, and grant/loan programs. Over one-half of the proposed funding is for projects of the postsecondary education institutions.

Representative Clark said the Judicial Branch plan would be reviewed first, to be followed by plans of agencies which administer grant or loan programs that are authorized in the capital budget.

Judicial Branch – The presentation on the Judicial Branch plan was made by Mr. Garlan Vanhook, AOC General Manager for Facilities, who thanked the Board for its support of efforts to improve the process for planning and constructing judicial facilities throughout the state.

Mr. Vanhook reported that 18 of the 20 projects authorized by the 2000 General Assembly have been occupied with only projects in Bullitt County and Johnson County remaining to be completed. He said three projects had required additional funding – Harlan County, Breathitt County, and Johnson County. Project Development Boards are being organized for the 18 projects authorized by the 2005 General Assembly.

Mr. Vanhook directed members' attention to the brochure that had been distributed relative to the proposed Judicial Branch projects.

Senator Westwood asked about the cost increase for the Johnson County project, which had been attributed to the prevailing wage rate. Mr. Vanhook said in some instances, there were triple digit percentage increases in wage rates (including the general labor rate) when hearings to set prevailing wage rates were held between the design and bid phases of the project. Responding to a further question from Senator Westwood, Mr. Vanhook said it would be difficult to estimate the savings if use of the prevailing wage had not been required. He said the change in the rate increased the cost estimate for the $7 million Johnson County project by $1 million.

Citing the high priority that the Board places on building maintenance, Mr. True asked several questions about this issue relative to the court facilities. Mr. Vanhook explained that since most of the new facilities are occupied 100% by the courts, it is easier to undertake needed maintenance projects since AOC pays the entire cost. When the courts occupy only a portion of the facility, the county also has to fund a portion of such costs and sometimes has been unwilling to do so. He said that even though Part IV of the Facilities Management Guide has not been officially been adopted, it is being used and provides checklists for counties to use in tracking maintenance. AOC staff is also a resource available to counties if they need help finding a contractor or other services. Pursuant to House Bill 734 enacted by the 2000 General Assembly, if a county is not providing adequate upkeep of a facility, AOC can apply the money it provided for that purpose to obtain a third party contract service. He said it is difficult to say what percentages of facilities are being maintained well, average, or below average, but AOC has taken a couple of new buildings over from the county after realizing that the local commitment to maintenance and cleanliness was below par.

Mr. Vanhook said AOC's project priorities have shifted somewhat because improvements to some existing facilities have made them suitable for continued use. He thanked his staff for their work to implement the facilities maintenance policies and procedures.

Mr. Hintze said there has been no more significant change in state policy, in regards to capital planning, capital budgeting, and capital investment, at large, than what has occurred in the Judicial Branch since this Board and the six-year capital planning process was created by the 1990 session of the General Assembly.

Representative Clark asked how the increasing use of drug courts has been addressed in the court facilities. Mr. Vanhook said the computer program used by AOC can be easily adapted to address changing needs for projects. He said in some of the facilities initially authorized in 2000, rooms had to be used for other than their initially designed purpose but all of the drug court programs are being accommodated.

<u>Department of Agriculture</u> – Commissioner Richie Farmer and other members of his staff addressed various items in the Department's plan. Commissioner Farmer explained the need to purchase three large scale test trucks (priorities numbers 2, 3 and 4), which are used by field inspectors to test scales in the stockyards. Two of these would replace existing vehicles, while the third would allow for smaller service areas.

Executive Director for Strategic Planning and Administration Glenn Mitchell said the Department's number one priority is a forage (hay) testing van and introduced Michael Judge, Director of Marketing and Promotion, to discuss this item further. Mr. Judge said the Department has two vans that are used to take samples and provide chemical analysis of forages that farmers use for their livestock as required by statute. One based in Frankfort serves central and eastern Kentucky, and one based in Paducah serves western Kentucky. The van to be replaced has approximately 308,000 miles on it and is probably getting close to the end of its functional life. It is necessary to have two vans in order to meet the required ten-day turnaround.

Representative Clark asked why these new vehicles are proposed to be financed from state funds rather than restricted funds as is usually the case. Commissioner Farmer said the fees charged by the Department have not been increased in many years, so funding from that source is not available. In response to a further question from Senator Boswell, Commissioner Farmer said the Department expects to propose some fee increases for consideration by the 2006 General Assembly.

Mr. Mitchell said the next project – priority number 5 - is a fuel/pesticides testing lab to replace the contracts that have traditionally been used for this type of testing. He said the costs of the tests have increased significantly, and there is also the issue of turnaround time when samples must be sent out of state for testing. In response to Senator Boswell's question, he said the lab would be located in east Frankfort near the regulation and inspection division on Corporate Drive. The lab would use some existing mobile equipment as well as new equipment that is proposed in this project. In response to a further question, Mr. Mitchell added that the Department does not occupy space in the Central Lab facility in Frankfort. Mr. Hintze said the Department was originally considered to be a tenant when the Lab was being planned, but it did not work out.

As priority number 6 for the Department, Commissioner Farmer identified the Animal Shelter grant program. Deputy Commissioner Mark Farrow said that of the $2.6 million provided to date for the program, about $200,000 remains. Requests totaling $8.4 million have exceeded the available funds. This is a matching program which requires the county to provide 20 percent of the funds. Deputy Commissioner Farrow explained that the 2004 General Assembly rewrote the entire animal control law and counties must be in compliance with the new standards by 2007. In response to a question from Representative Clark, Commissioner Farmer said the new law appears to be working well and does not need any changes.

The PACE (Preservation of Agriculture Conservation Easements) program is the Department's seventh and final priority. Mr. Mitchell said the program endeavors to keep agricultural land in production by paying the difference between the developed value of the land and the farming value of the land. An easement is placed on the land to keep it in agricultural use in perpetuity. Funding proposed for the planning period is based on matching about $1.8 million in federal funds expected to be available each year. He noted that additional information about the program was recently provided to the LRC Capital Projects and Bond Oversight Committee; Representative Clark asked for that information to also be made available to CPAB.

Senator Boswell asked whether the program is being implemented on a broad basis or is focused in any particular geographic area. Mr. Mitchell said there has been some criticism of the program because where development occurs is where the farmland protection is needed so some counties do appear to get heavier use of the program. The extensive evaluation criteria that have included whether the farm was used to grow tobacco are being re-written because of the tobacco buyout. Mr. Mitchell said there are $100 million worth of applications pending due to the lack of funding.

<u>Economic Development Cabinet</u> – It was noted that the Cabinet recently decided to reverse the priority rankings for two proposed projects – the New Economy High–Tech Construction/Investment Pools are now priority number 3 and the KEDFA Bonds project is now priority number 4.

Deputy Commissioner of the Department of Financial Incentives Warren Nash then addressed the Economic Development (ED) Bond Program. Under the program, bonds are issued to provide funds which are then made available as grants or forgivable loans through local government entities to companies that are locating or expanding their manufacturing or distribution operations in Kentucky. Recipient companies must commit to the creation or retention of jobs and there are provisions for payback to be made to the local government if the commitments are not met. Mr. Nash said 168 grants or loans totaling over $141 million have been made since the program was established in 1980.

Responding to Senator Westwood's question about tax incentives having reduced the use of ED bonds, Mr. Nash said an advantage of the tax incentives is that the company must create the revenue and produce the jobs before receiving the benefit. However, sometimes it is important to have the ED grant or loan available as part of the overall package of incentives. Senator Westwood expressed concern about the local tax revenue that is lost as a result of the tax incentives and asked about using a voucher system that would assist a company in exchange for hiring local contractors, etc. Mr. Nash said he is not sure whether such an approach has been considered. Donna Duncan, Commissioner of the Department of Financial Incentives, noted that most of the tax incentive programs affect the corporate income taxes that are paid to the state rather than taxes paid to the local entities. Mr. Nash added that it is the taxes from the new revenues being produced rather than existing taxes that are affected.

Senator Boswell asked whether the emphasis is on creating new jobs rather than retaining existing jobs and cited the example of Green River Steel in Owensboro, which received $5 million from the state then closed its plant at the end of its contractual agreement. Mr. Nash said the ED program is used for job retention and when paybacks are required, those funds go to the local community to be used for other economic development purposes. Commissioner Duncan said the Cabinet has a very active program to work with existing business on their expansion plans.

Deborah Clayton, Commissioner of the Department of Commercialization and Innovation (DCI), next discussed the New Economy High-Tech Investment and High-Tech Construction Pools, which relate to the Kentucky Innovation Act enacted by the 2000 General Assembly. These monies are used to support the development of high technology jobs and knowledge based and/or research intensive companies, and to support the operating costs of the six regional Innovation and Commercialization Centers and the central headquarters operations. Commissioner Clayton said the demand is exceeding the available funds and for that and other reasons, the DCI will be giving much greater scrutiny to the proposals including a greater focus on accountability and return on investment.

Noting that several of the economic development programs have traditionally been financed by the issuance of 20-year bonds, Mr. Hintze said there should be some consideration given to whether this is the best way to finance investments in this area. He said in some instances companies fulfill their pledges and leave while the state is still paying on its 20-year bond commitment. In other instances, at the time the commitment to long-term financing is being made, it is difficult to know whether the project that is being funded will have a comparable economic development impact.

Commissioner Duncan said the tax incentives are easier to deal with because they relate to performance, but programs assisted through the DCI are often cutting edge technology and the start-up companies may not be profitable. However, the loan and bond programs are critical to the success of economic development. Commissioner Clayton said recipients of DCI allocations should not view them as entitlements that will be received every year. The call for proposals next spring will have criteria related to accountability and milestones.

Representative Clark noted that in July representatives of postsecondary education had proposed funding some facilities as economic development projects. Commissioner Clayton said she questions the presence of the high-tech construction pool in the DCI and believes requests for postsecondary buildings should go through the Council on Postsecondary Education. She said DCI should not be in the business of constructing buildings and providing space for research, rather its focus should be on creating jobs. Mr. Nash said the involvement of DCI should come at the point of commercialization, not during the basic research. Commissioner Clayton agreed that after the intellectual property is identified and collaborative partnerships with industry begin is where the DCI should enter the process.

Commissioner Duncan then addressed the Kentucky Economic Development Finance Authority (KEDFA) loan program which makes loans to businesses to encourage them to create jobs and to expand and do business in Kentucky. Beginning in 2000, KEDFA funds have been used to begin the New Economy programs and to help with state budget problems, so there is a need to replenish the loan funds to keep the program viable and active. She also noted that a new program for small business lending is to begin in September.

<u>Governor's Office for Local Development (GOLD)</u> – After distributing a handout to the Board, Deputy Commissioner Cordell Lawrence said he would discuss the programs administered by GOLD, and Rob Potter, Deputy Director of the Kentucky Infrastructure Authority (KIA), would discuss the programs of that agency, which is administratively attached to GOLD.

Mr. Lawrence said GOLD's newest program is the Community Economic Growth Grant (CEGG) program, which was established with funding of $10 million in state bonds in the current budget. Grants are to be made to support non-recurring investments in capital projects to contribute to community or industrial development in the Commonwealth. He reviewed the types of eligible projects and noted that matching funds are not required, but are encouraged.

Noting that materials distributed by Mr. Lawrence indicated that eligible projects included retirement of a mortgage or other indebtedness on a capital project made within the preceding five calendar years, Mr. Hintze said the possible substitution of long-term state debt for already incurred local debt causes him great concern and thinks it may complicate the bond issuance process. Senator Boswell said he shared that concern. Mr. Lawrence said GOLD would be “extremely suspect” in considering any such applications.

Mr. Lawrence then described the operations and needs of the Flood Control Program, which assists local government in providing the required match for flood control projects sponsored by federal government agencies. He also discussed the Renaissance on Main program, which recognizes and rewards Kentucky cities that proactively take steps to revitalize and maintain safe, vibrant, and economically sound development in downtown communities.

Senator Boswell complimented GOLD for the services provided to local communities, then asked if there have been increased demands on the Renaissance Program since elimination of the Enterprise Zone program as it previously existed. Mr. Lawrence said he did not have any direct knowledge, but thinks there may be increased pressure on the Renaissance funds. Representative Crimm noted the positive response to the Renaissance Program and said he hopes it can eventually be expanded again. Mr. Vanhook said it is an excellent program, but he is concerned that sometimes projects are inadequately funded in order to allow for the available funds to be more widely distributed. Mr. Lawrence said GOLD plans to enhance its oversight and critical review of the projects and wants to ensure projects are funded so as to fulfill their original plan and intent.

Deputy Commissioner Rob Potter next reviewed the purpose, operation, and funding of the loan and grant programs administered by KIA. Fund F, the Federally-Assisted Drinking Water Revolving Loan Program (83% federal / 17% state), provides financial assistance to governmental agencies for the construction of publicly owned water supply projects. Fund A, the Federally-Assisted Wastewater Revolving Loan Program (83% federal / 17% state), provides financial assistance to government agencies for the construction of publicly owned treatment works as defined by the Federal Clean Water Act. The Fund B Infrastructure program (100% state) provides financial assistance to governmental agencies, and in some instances, investor-owned water systems for the construction or acquisition of infrastructure projects.

In response to Mr. True's question, Mr. Potter said amounts from Fund B can be used for any infrastructure-type program, not just water and wastewater. Noting that the Kentucky River Authority is seeking to increase water supply by raising or replacing dams on the Kentucky River, Mr. True asked if Fund B could be used for that purpose or to build a pipeline in Louisville from the Ohio River to Lexington. Mr. Potter said Fund B could be used for such projects. Mr. True and Representative Clark asked Mr. Potter to provide further information to the Board in that regard.

Mr. Potter next described the proposed new Broadband Development Program. Its purpose would be to create a grant and/or revolving loan fund pool that would allow communities to leverage state, federal and private dollars to blanket Kentucky with broadband internet access, encourage citizen use of the internet and computers, and provide every Kentucky community with an online presence for delivering citizen services and promoting economic development. The program would be administered by KIA staff. The eligibility criteria and award process are currently being developed. Funding of $15 million is proposed for 2006-08, and there would be no matching requirements.

In response to a question from Representative Crimm, Mr. Potter said Connect Kentucky is doing an assessment of the counties of the state and that about 75 percent of Kentucky households currently have broadband access, so this initiative would focus on the other 25 percent. Representative Crimm and Senator Boswell said they think it is important to get this service throughout the state. Mr. Potter said this program is intended to go into the rural ("last mile") areas where it is not fiscally feasible for private providers to offer the service. The money could be used for satellite broadband where DSL, cable, or other forms of broadband are not possible.

Mr. Hintze said he believes is it essential to have broadband statewide. He then asked what the state would physically be obtaining with the proposed funding. Mr. Potter said the funds would be used as a subsidy to cover the cost of providing a satellite dish and box for a computer to receive the broadband connection via satellite. With 400,000 unserved households at a cost of $200 per household, the cost would total $8 million. The remaining funds would be available to private entities or governmental municipalities to extend the infrastructure to unserved areas of their communities. Assuming there is a need in 30 counties (25% of the state), the $7 million would provide $235,000 per county. He added that in some instances there might be a wireless deployment until the backbone or cable could be extended into an area, then the wireless deployment could be moved further out.

Senator Westwood asked if GOLD had considered the possibility of objections from people in the suburbs and urban areas who are paying for these services themselves, without being subsidized. Mr. Nemes said it might be better to provide the options and opportunities and have the user pay the cost of connecting to the service. Mr. Vanhook said he agreed that it would be logical to use the funds for infrastructure and let the beneficiary (user) pay if he chooses to receive the service. Mr. Potter said that would be taken into consideration. Representative Clark said there would probably be further discussion on this topic.

School Facilities Construction Commission (SFCC) – SFCC Executive Director Robert Tarvin reviewed a handout that had been distributed to the Board. He explained the three main sources of state funds used to support school facilities – capital outlay funds (based on headcount), the Facility Support Program of Kentucky (equalized wealth which is reported as local funds), and the SFCC (allocations based on facility needs, rather than district wealth or headcount). Each school district has a facility plan and the unmet need is based on total need less the local resources that are available. The ratio of a district's unmet need to the entire state's unmet need is the district's share of the SFCC appropriation. A district is allocated an amount for debt service, and can purchase whatever bonds it can for that amount in the market.

Dr. Tarvin said the SFCC program has had a significant impact. Since 1998, the number of schools in poor condition has decreased from 121 to 19, the number in fair condition has decreased from 296 to 190, and the number in better or excellent condition has increased.

Dr. Tarvin explained that following several years where funds were not coming into the system, there were pent up demands and in the last two biennia, the General Assembly has appropriated funds for special programs and needs rather than through the equalized distribution provided under the regular SFCC program. He said he believes more of the funds should be put into the general program and would recommend a constant, steady method of doing that. He said consistent funding of $100 million each biennium would allow for constant maintenance and repair of the schools.

Noting his involvement with the School Building Authority in the 1980s, Mr. True said at that time there were significant needs because the facilities were in such poor shape due to lack of maintenance. He said he sees inadequate maintenance in some of the new facilities that are now being constructed and indicated he understood that at one time there had been discussion of setting aside some of the capital outlay funds into a special maintenance fund for the schools. He asked if the SFCC had given any thought to dealing with school districts that do not maintain their facilities. Dr. Tarvin said that would be a function of the Department of Education, but that it would raise the issue of local control. He said there has been a reticence for the state to impose such requirements on the local schools.

Mr. True said local control can go only so far when the issue is stewardship of facilities constructed with taxpayer moneys. Noting the statutory authority given to AOC to take over maintenance of court facilities, he said the Board should consider a policy recommendation about asking the General Assembly to investigate whether there should be a statutory provision for state intervention when school buildings are not adequately maintained.

Representative Clark asked Ms. Ingram to include this on the list for discussion at a future meeting. He then asked CPAB members to advise staff of any other potential policy recommendations to be included on the agenda for future discussion.

There being no further business to come before the Board, Representative Crimm's motion to adjourn was seconded by Mr. Hintze and approved by voice vote at 12:50 PM.